

**STATE OF WISCONSIN**  
**DEPARTMENT OF INDUSTRY, LABOR & HUMAN RELATIONS**

Garrow Oil Corp.  
Attn. Mike Qualio  
Firststar Sheboygan  
P.O. Box 328  
Sheboygan, WI 53082-0328

Appellant,

vs.

PECFA Claim 454915-7024-11

Secretary, DEPARTMENT OF INDUSTRY,  
LABOR AND HUMAN RELATIONS,  
Respondent.

**FINAL DECISION**

Pursuant to a petition filed February 4, 1994, under §101.02(6)(e), Wis. Stats., and §ILHR 47.53, Wis. Adm. Code, to review decisions in an award letter issued on November 20, 1993, by the Department of Industry, Labor and Human Relations, a proposed decision has been issued on the Department's motion to dismiss the petition.

The issue for determination is whether the petition should be dismissed because it was not filed within 30 days of the issuance of the decision being appealed, as required by §ILHR 47.53(l)(b), Wis. Adm. Code.

**PARTIES IN INTEREST:**

Garrow Oil Corp.  
by: Attorney Thomas J. Basting, Jr.,  
Michael, Best & Friedrich  
100 East Wisconsin Avenue  
Milwaukee, WI 53202-4108

Department of Industry, Labor and Human Relations  
Division of Safety and Buildings  
By: Attorney Kristiane Randal  
Assistant General Counsel, DILHR  
P.O. Box 7946  
Madison, WI 53707

The authority to issue a final decision in this matter has been delegated to the undersigned by order of the Secretary.

The Hearing Examiner issued a proposed decision in this case dated December 30, 1994. The parties were given 20 days to file objections. Both Attorney Randal and Attorney Basting filed statements which supported the proposed decision in part and objected to the proposed decision in part. Having considered the proposed decision and the objections, the matter is now ready for final decision.

### **ORDER**

The Proposed Decision dated December 30, 1994, is hereby adopted as the final decision of the department with the following modifications:

**1. Add the following Conclusions of Law:**

#### CONCLUSIONS OF LAW

1. The requirements of §227.48(2), Stats., concerning notice of appeal rights do not apply to PECFA award letters such as the letter of November 20, 1993.
  2. The request for hearing filed by the appellant on February 4, 1994, was untimely under §47.53(1)(b), Wis. Adm. Code, and the department is without jurisdiction to hold a hearing.
- 2. Retain the first paragraph of the Discussion section. Remove the second paragraph of the Discussion section, and add the following paragraphs in its place:**

§ILHR 47.53, Wis. Adm. Code, does not require a notice of appeal rights to be placed in a letter of award or denial. Since the rule was published and available to all persons required to comply with its terms, the rule itself provides sufficient notice of the time limitation on requesting a hearing.

The petitioner has also argued that fundamental fairness requires that notice of the 30 day time limit be given in letters of award or denial. However, for the Department to deny the motion to dismiss on this basis alone would amount to disregard of the jurisdictional limits that the rule is intended to establish. This is beyond the Department's discretion, because State agencies are limited to the express authority conferred by statute and rule, and do not possess implied powers unless such powers are necessary to carry out the express powers. State of Wisconsin (Dept. Adm.-dn.) v. Department of Industry, Labor & Human Relations 77 Wis. 2d 126 (1977). In this case, the department has the authority to hear appeals brought within 30 days of a departmental decision under the PECFA program. For appeals filed after 30 days, the department simply lacks the authority to hold a hearing.

**3. Remove the Proposed Ruling from the proposed decision, and add the following Order in its place:**

**ORDER**

The motion to dismiss the request for hearing is granted.

**NOTICE TO PARTIES**

**Request for Rehearing**

This is a final agency decision under §227.48, Stats. If you believe this decision is based on a mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision and which you could not have discovered sooner through due diligence. To ask for a new hearing, send a written request to Department of Industry, Labor & Human Relations, Office of Legal Counsel P. O. Box 7946, Madison, WI 53707-7946.

Send a copy of your request for a new hearing to all the other parties named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the hearing examiner made and why it is important. Or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain how your request for a new hearing is based on either a mistake of fact or law or the discovery of new evidence which could not have been discovered through due diligence on your part, your request will have to be denied.

Your request for a new hearing must be received no later than 20 days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in Sec. 227.49 of the state statutes

Petition For Judicial Review

Petitions for judicial review must be filed no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one). The petition for judicial review must be served on the Department of Industry, Labor and Human Relations, Office of Legal Counsel 201 E. Washington Avenue, Room 400x, P.O. Box 7946, Madison, WI 53707-7946.

The petition for judicial review must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for judicial review is described in Sec. 227.53 of the statutes.

Signed and dated in Madison, Wisconsin this 30th day of  
January, 1995.

Patrick J. Osborne, Deputy Secretary  
Department of Industry, Labor & Human Relations  
P O Box 7946  
Madison WI 53707-7946  
Telephone: 608-266-7552  
Facsimile-. 608-266-1784

cc: Parties in Interest

STATE OF WISCONSIN  
Before the Department of Industry, Labor and Human Relations

**PROPOSED HEARING OFFICER RULING**

In the matter of the denial of  
reimbursement of PECFA Program Funds to:

Claim No. 54915-7024-11

Garrow Oil Corp.  
Attn. Mike Qualio  
Firststar Sheboygan  
P.O. Box 328  
Sheboygan, WI 53082-0328

STATE HEARING OFFICER: Jo Ellen Rehbein

REPRESENTATIVES:

Applicant: Atty. Thomas J. Basting, Jr.  
Michael, Best, & Friedrich  
100 East Wisconsin Avenue  
Milwaukee, WI 53202-4108

Department: Atty. Kristiane Randal  
DILHR  
P.O. Box 7946  
Madison, WI 53707-7946

**NOTICE OF RIGHTS**

Attached is the Proposed Ruling on the Motion to Dismiss in the above stated matter. Any party aggrieved by the proposed ruling has the right to file written objections to the proposed ruling. Such written objections must be filed within twenty (20) days from the date this Proposed Ruling is mailed. The individual designated to make the FINAL Ruling of the Department of Industry, Labor and Human Relations in this matter is Patrick J. Osborne, Deputy Secretary of the Department of Industry, Labor and Human Relations, whose address is 201 East Washington Avenue, Room 400X, Madison, Wisconsin 53707. All written objections should be addressed directly to Mr. Osborne.

Dated and Mailed: December 30, 1994

**STATE OF WISCONSIN  
BEFORE THE  
DEPARTMENT OF INDUSTRY, LABOR  
AND HUMAN RELATIONS**

Garrow Oil Corp.  
Attn. Mike Qualio  
Firststar Sheboygan  
P.O. Box 328  
Sheboygan, WI 53082-0328

**PROPOSED RULING ON THE  
MOTION TO DISMISS**

Appellant,

vs.

Secretary, Wisconsin Department of  
Industry, Labor and Human Relations,

PECFA CLAIM #54915-7024-11

Respondent

Hearing #94-8

The respondent, by its attorney, has filed a motion to dismiss the appellant's request for hearing on the basis that the appeal was not filed timely. The motion, is denied-

**FINDINGS OF FACT**

1. On November 20, 1993, the Department issued a letter under the PECFA program awarding reimbursement in the amount of \$44,974.51 and denying reimbursement in the amount of \$33,716.40. That letter did not indicate that it was a decision nor did it state any appeal rights.

2. On February 4, 1994, the appellant, by its attorney, filed an appeal of the November 20, 1993, letter, which was considered a request for a hearing.

3. On February 11, 1994, the Department denied the appellant's request for a hearing stating that the appeal was not filed within 30 days after a decision had been issued as required under ILHR 47.53 of the Wisconsin Statutes.

4. On March 11, 1994, the appellant, by its attorney, filed a petition for a chapter 227.42 contested case hearing.

**DISCUSSION**

The award letter dated November 20, 1993, was not a decision under s- 227.48(2), Stats. Section 227.48(2) was intended to cover only s. 227.47 decisions. The award letter was a decision

as contemplated under ILHR 47.53. Therefore, it was subject to the appeal requirements of ILHR 47.53(i)(b).

However, the 30-day time limit in ILHR 47.53 carries an inherent requirement that a party receive notice of the appeal rights and limitations. Fundamental fairness also requires a notice of appeal rights. The November 20, 1993, award letter contained no appeal rights. Therefore, the 30-day time limit is inapplicable and the appellant is entitled to a hearing.

#### PROPOSED RULING

The respondent's motion to dismiss the appellant's appeal is denied.

Dated and Mailed: December 30, 1994

Jo Ellen Rehbein  
Hearing Examiner  
Fox Valley Hearing Office  
2900 N. Mason St.  
Suite B  
Appleton, WI 54914